



Minnesota Schools' New Immunity: What Does it Mean?

The 2012 Minnesota Legislature created a new immunity that will help limit school district liability for recreational activities on school properties. This should be an important tool for encouraging schools to open their doors to the community for recreational activity. With greater access to recreational facilities, Minnesotans will have more opportunities to live healthy and active lifestyles.

So, what's new?

Minn. Stat. § 466.03, subd. 23, provides schools immunity for injuries or other losses resulting from the use of school property or a school facility made available for public recreational activity.¹

But, isn't there already a recreational immunity for schools?

Yes. Under Minn. Stat. § 466.03, subd. 6e, schools and other municipalities are (and will continue to be) protected from liability for claims based on the construction, operation, or maintenance of any property (whether owned or leased) intended or permitted to be used as a park, an open area for recreational purposes, or for recreational services.²

Then, how does this provide schools with any additional protection?

It adds a more explicit exception to liability for recreation-related injuries on school property. While government immunities bar the recovery of damages, they don't stop someone from filing a lawsuit.³



When lawsuits are filed, judges have to determine whether the parks and recreation immunity applies to the situation. But in future cases,⁴ school districts will be able to point to a liability exception created specifically for their facilities.⁵

Are there any exceptions?

The new immunity law does not affect any of the existing duties a school district owes to its employees, its students, or the public at large.⁶ In addition, both recreational use immunities have exceptions for conduct that would entitle a trespasser to damages. Commonly referred to as the trespasser standard of care,⁷ a school district still faces the possibility of liability for certain artificial conditions.⁸ For example, if the school district knew of a highly-dangerous hazard on their property but did not post warnings or remove the dangerous hazard they may be liable if someone were to be injured because of the hazard.⁹

Does the new law include any financial incentives for the joint use of school recreational facilities?

No. The legislation doesn't address any of the existing financial barriers to joint ventures.¹⁰

When did this go into effect?

The new immunity covers incidents occurring on or after May 24, 2011.¹¹



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Endnotes

- ¹ H.F. No. 1343, 87th Leg. (Minn. 2011), *available at* <https://www.revisor.leg.state.mn.us/laws/?id=57&doctype=Chapter&year=2011&type=0#laws.0.2.0>.
- ² *Goetz v. Indep. Sch. Dist. No. 625, St. Paul Sch.*, A08-0254, 2009 WL 22270 (Minn. Ct. App. Jan. 6, 2009).
- ³ See <http://www.publichealthlawcenter.org/topics/healthy-eating/liability> for additional resources.
- ⁴ As of September 5, 2012, there have been no lawsuits involving the new recreational use immunity for school property or school facilities.
- ⁵ The courts are likely to apply the same analysis to what constitutes recreational use and school liability under Minn. Stat. § 466.03, subd. 23 (2012) as it has previously done for Minn. Stat. § 466.03, subd. 6e (2012).
- ⁶ Minn. Stat. § 466.03, subd. 23 (2012).
- ⁷ Recreational-use immunity is subject to the exception that it does not provide immunity “for conduct that would entitle a trespasser to damages against a private person.” Minn.Stat. § 466.03, subd. 6e. *See also* *Prokop v. Indep. Sch. Dist. No. 625*, 754 N.W.2d 709, 714 (Minn. Ct. App. 2008).
- ⁸ Minnesota courts use the standard for a landowner’s tort liability to adult trespassers set forth in the Restatement (Second) of Torts, under which a landowner will be liable only if: (1) the artificial condition is likely to cause death or serious bodily harm; (2) the landowner has actual knowledge of that danger; and (3) the danger is concealed or hidden from the trespasser. Restatement (Second) of Torts § 335. *See also* Restatement (Second) of Torts § 339.
- ⁹ *Lloyd v. City of St. Paul*, 538 N.W.2d 921, 923 (Minn. Ct. App. 1995).
- ¹⁰ Facts, Schools as Community Resources for Physical Activity: Joint Use of School Recreational Facilities, Amer. Heart Ass’n, http://www.heart.org/idc/groups/heart-public/@wcm/@mwa/documents/downloadable/ucm_426423.pdf (last visited Aug. 1, 2013).
- ¹¹ H.F. No. 1343, 87th Leg. (Minn. 2011), *available at* <https://www.revisor.leg.state.mn.us/laws/?id=57&doctype=Chapter&year=2011&type=0#laws.0.2.0>.